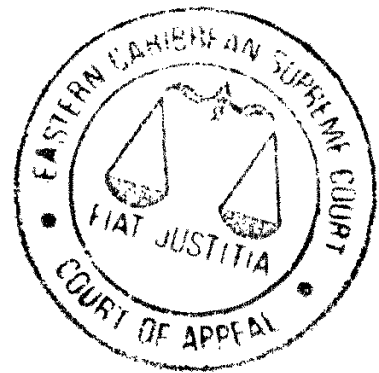


IN THE COURT OF APPEAL



(21)

SAINT VINCENT:

CIVIL APPEAL NO. 34 of 1975

BETWEEN: EMMANUEL F. ADAMS
ELDON SMITH AND OTHERS

Plaintiff/Appellants

VS.

BERTRAM EUSTON COMMISSIONER
HUGHES HAYES HAMLETT
COLONEL SYDNEY ALOYSUIS ANDERSON
THE ATTORNEY GENERAL (St. Vincent)

Defendants/Respondents

Before: The Honourable Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: O.R. Sylvester for 1st Appellant
E. Robertson for other Appellants

Attorney General for the first three Respondents

1977, April 21, 25, 26 & 27
1977, Sept 30

J U D G M E N T

ST. BERNARD, J.A.:

The appellants were appointed, on the 5th March, 1973, by the Governor as Commissioners for the town of Kingstown under the Kingstown Board (Dissolution and Commissioners Order) 1973, (S.R.& O. No. 5) which were made under section 45 of the Kingstown Board Act, 1970. These appointments were extended by two Acts, namely, the Kingstown Board (Continuance of Dissolution) Act, 1973, (No. 12) and (No. 25) respectively, and the appellants continued in office as such Commissioners until the 12th day of December, 1974, when their appointments were revoked by the Governor.

On the 15th January, 1975, the Governor under the powers conferred by section 2 of the Commissioners of Enquiry Ordinance,

/Cap. 160... ..

Cap. 160 of the Laws of St. Vincent, appointed the second and third respondents and another person as Commissioners for the purpose of making inquiry into illegalities and irregularities into the management and operations of the Kingstown Board between the 1st day of March 1973, and the 12th day of December, 1974, and to report thereon. The Commission was published in the Government Gazette on the 16th and 28th days of January, 1975, respectively. The Commissioners began the hearing on the 3rd February, 1975, and sat for about one week when the chairman fell ill and resigned his appointment. The first respondent was appointed by Commission to fill the vacancy created. This Commission was published in the Government Gazette on the 11th March, 1975, with identical terms of reference as those published on the 16th and 28th days of January. The inquiry continued from where the chairman left off and continued sitting until the 21st May, 1975. On that date Mr. Henry Forde of Counsel objected to questions put to a witness and asked for a ruling as to whether or not the Commissioners were competent, under their terms of reference, to inquire into the conduct, operation and management of the appellants as Commissioners for the town of Kingstown after the dissolution of the Kingstown Board on the 5th March, 1973. The Commissioners ruled that they were competent to do so. The appellants objected to this ruling and filed a writ seeking certain declarations from the Court. The matter came on for hearing before the Court on the 10th September, 1975, but on the 10th June, 1975, Parliament passed the Commission of Enquiry (Clarification) Act, 1975, (No. 12). Sections 2 and 3 of this Act read as follows:

"2. For the purpose of the removal of any doubts it is hereby declared that reference to the Kingstown Board in the Commissions issued by His Excellency Sir Rupert Godfrey John, Knight Bachelor, Governor of the State of St. Vincent dated 28th January, 1975 and 11th March, 1975, to enquire into the management and operation of the Kingstown Board between the 1st day of March, 1973, and 12th day of December, 1974, shall be deemed to include the Commissioners for the Town of Kingstown and all facts and things done or purported to be done or on behalf of the said Commissioners during the period

/1st March..

1st March, 1973 to 12th December, 1974.

3. This Act shall have retrospective effect from 28th January 1975."

The trial judge granted only the first relief prayed for, and made the following declaration -

"a declaration that having regard to the provisions of the Kingstown Board (Dissolution and Commissioners) Order, 1973, (S.R.& O. No. 5), the Kingstown Board (Continuance of Dissolution) Acts, 1973, No. 12 and 25, the Kingstown Board was dissolved on the 5th day of March, 1973, and thereafter ceased to exist or have any effect until the 12th day of December, 1974."

He stated that the conjoint effect of paragraphs 7 and 8 of the appellants' statement of claim was to prohibit the Governor ultimately from receiving the report of the Commissioners and the granting of any such relief "would be tantamount to the granting of an injunction against the Crown contrary to the provisions of Section 27 of the Crown Proceedings Ordinance, 1952." He therefore refused any further relief.

Counsel for the appellants submitted that, having regard to the terms of reference stated in the Commission appointed by the Governor, the Commissioners had no authority to inquire into the conduct, management and operations of the appellants as Commissioners for the town of Kingstown and the judge was in error when he refused to grant a declaration to that effect, and also that an inquiry into the Kingstown Board from 6th March, 1974, to the 12th December, 1974, was a nullity. He stated that when the Clarification Act was passed the inquiry was closed and no further evidence was taken. Counsel contended that the Clarification Act did not refer to the Commission issued on the 15th January, 1975, and published the following day. He further stated that there were no Commissions dated the 28th January, and 11th March, 1975, respectively. Counsel further submitted that the Clarification Act purported to repeal section 2 of the Commissions of Enquiry Ordinance, Cap. 160 as it completely altered the terms of reference given by the Governor and changed the whole nature of the Inquiry and thus deprived the appellants from proper representation

/as...

as contemplated by section 18 of the said Act as amended by the Commissions of Enquiry Ordinance, 1932, (No. 17). He also submitted that when the Commissioners ruled that they had jurisdiction under the terms of reference to inquire into the conduct and affairs of the Commissioners of the town of Kingstown they committed an error of law and this gave the court jurisdiction to intervene.

The Attorney-General submitted that the Clarification Act took retroactive effect from the 28th January, 1975, and therefore a writ filed on the 21st May, 1975, was subject to this law. He stated that the Governor mentioned in the Commissions of Enquiry Ordinance really meant the Cabinet and therefore the proper authority was correcting the error in the terms of reference. He contended that the appellants must fail in the appeal as they sued in their personal capacity and not as Commissioners of the town of Kingstown and further they had not shown that any of their legal rights were infringed.

Section 7 of the Commissions of Enquiry Ordinance enjoins the Commissioners to make a full, faithful and impartial inquiry into the matter specified in the Commission and to report thereon, while section 18 provides that any person whose conduct is the subject of inquiry under this Ordinance, or who is in any way implicated or concerned in the matter under inquiry shall be entitled to be represented by Counsel at the whole of the inquiry It appears that the conjoint effect of these two sections is to require the Commissioners to act impartially and with fairness in the conduct of the inquiry. Any person, therefore, whose conduct is the subject of inquiry has a right to know the evidence, if any, which has been given against him, that is, there must be disclosure of the evidence and confrontation of the witnesses so that he will be afforded a fair opportunity to correct the evidence or contradict the witnesses. This is true, in my view, whether the inquiry is quasi-judicial, administrative or investigatory. It was submitted in this case that the inquiry was quasi-judicial and therefore it should be conducted in a judicial manner. In my view an inquiry under the above Ordinance although it has the powers of a court to summon witnesses is administrative or investigatory since the functions

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of the Commissioners differ from those of a judge. They regulate their own procedure, their conclusion is expressed in a report and is not binding on any one. They determine no rights, neither do they find guilt or innocence in anyone. But whether quasi-judicial or not the Commissioners must function within the framework of the statute empowering them to act and make inquiry in accordance with their terms of reference. In the instant case the terms of reference were to inquire into -

- "(a) the appointment dismissal, discipline and assignment of employees, whether servants or agents of the Board, or whether engaged full time, or on job work or otherwise;
- (b) the use, deployment and disposal of funds, equipment and labour by the Board, whether within or without the boundaries of the town of Kingstown as defined in the Kingstown Board Ordinance, 1970, or on public or private property;
- (c) the award of Contracts by the Board, including the contract to build a Town Hall;
- (d) the expenditure of the funds of the Board; between the 1st March 1973 and 12th December, 1974."

The trial judge found the Board ceased to exist on the 5th day of March, 1973, and so declared. The effect of this declaration is that there was an error in the terms of reference and the Commissioners had no authority to inquire into the conduct of the appellants after the 5th March, 1973. It was stated to the court that the appellants were present at the inquiry with counsel up to the 21st May, 1975, and even gave evidence. In my view the inquiry became a private one in which they participated.

In regard to the Clarification Act it is clear that the word "dated" is an error and should have been "published". I would not hold that this defect gave the Act no meaning. When the Clarification Act was passed on the 10th June, 1975, the position became different. Then there was an Inquiry appointed by the Governor with set of terms of reference and Parliament deeming those terms of reference to be terms of reference for an Inquiry into the conduct of the appellants. In my view this situation must cause some kind of confusion. I do not know what evidence

/was.....

was given at the Inquiry but it seems to me from the moment the deeming provision came into effect the nature of the Inquiry was different, and the appellants were entitled under section 18 to representation by Counsel throughout the whole of the Inquiry. The trial judge held that the appellants voluntarily withdrew from the proceedings before they were concluded and so they were not deprived of the right of representation by Counsel. In my opinion at the stage when they withdrew themselves there was no public inquiry into the conduct of the appellants and they were not entitled to representation as of right under section 18. To speak loosely, the Clarification Act legitimated the Inquiry ex post facto, and the effect of this legitimation was to clothe what would otherwise have been a private Inquiry with the cloak of a public one. Commissioners appointed under the statute must act in accordance with their terms of reference and if on the 21st May, 1975, their actions were ultra vires then it would appear that their inquiry into the conduct of the appellants in public without authority and in their absence for part of the time would have affected their rights at the time the writ was filed to a fair and impartial hearing as contemplated by sections 7 and 18. If there was any evidence taken after the appellants left the inquiry and after the Clarification Act was passed the Commissioners should have informed the appellants of it and, in any event, recall them and give them an opportunity of explaining or exculpating themselves, and cross-examining the witnesses, if necessary.

The Attorney-General submitted that there was no cause of action as the appellants should have sued and the writ endorsed in their capacity as Commissioners for the town of Kingstown and not in their personal capacity.

When the writ was filed the appellants' Commissions were revoked and they were not challenging the validity of that revocation. They were not holding themselves out as Commissioners. They were private citizens whose conduct was the subject of public investigation and,

/in my.....

in my view, there was no breach of the Court Rules to sue in their private capacity.

Owing to the confusion which exists in this matter it is difficult to decide what order a court could fairly make to do justice to the parties. I do not think the Inquiry was a nullity owing to the passing of the Clarification Act, but the appellants have been prejudiced to some extent. I would allow the appeal and declare that those parts of the report which refer to the appellants should not be published

(E.L. St. Bernard)
JUSTICE OF APPEAL

I have had the opportunity of reading beforehand the judgement of Mr. Justice St. Bernard. I agree with the conclusions reached, and the reasons given for arriving at those conclusions, and there is nothing further that I can usefully add.

(N.A. Peterkin)
JUSTICE OF APPEAL